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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re M.L., a Person Coming Under the  
Juvenile Court Law.

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent,

v.

DARLA M.,

Defendant and Appellant.

B193658

(Los Angeles County  
Super. Ct. No. BK01219)

APPEAL from an order of the Superior Court of Los Angeles County. Jan Levine,  
Judge. Affirmed.

Michael A. Salazar, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Raymond G. Fortner, Jr., County Counsel, Larry Cory, Assistant County Counsel,  
Owen L. Gallagher, Deputy County Counsel, for Plaintiff and Respondent.

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Mother Darla (“mother”) appeals from the court’s denial of her petition under Welfare and Institutions Code section 388 seeking reunification services with her daughter, M. We affirm.

## **FACTS AND PROCEDURAL HISTORY**

M. was born in 1999. At birth, she tested positive for methamphetamine. The dependency court sustained a petition filed by respondent Department of Children and Family Services making M. a dependent of the court under section 300 of the Welfare and Institutions Code. In 2002, the case was closed and the court terminated its jurisdiction, with M. remaining at home with mother. That petition was not, however, the first or last involving mother, for respondent had filed another petition years earlier to make mother’s now-adult son, Ricky, a ward when he was two years old. Mother never reunified with Ricky and he remained in foster care for the rest of his childhood.

In December 2005 when M. was six years old, deputy sheriffs found methamphetamine and drug paraphernalia accessible to M. in mother’s home. Consequently, the department filed a new section 300 petition, alleging mother could not care for M. because of her almost 40 year history of drug abuse. The department placed M. with an adult brother (not Ricky) and recommended no family reunification services for mother because she had not reunified with Ricky. (Welf. & Inst. Code, § 361.5, subd. (b)(10) [court need not order reunification services if parent previously failed to reunify with another child].)

Mother entered a drug and alcohol treatment facility in January 2006. She also submitted to the petition’s allegations, which the court sustained. At the disposition hearing in February 2006, the court ordered monitored visitation for mother and M., but no reunification services. The court also scheduled a permanent plan hearing for later in the year.

Three months later in May 2006, M.’s brother asked the department to remove her from his home. She was suffering auditory hallucinations, and he could not control her.

She acted out sexually and had tried to suffocate her three-year-old nephew. In response, the department placed M. in a foster home and she was put on psychotropic medication.

In the meantime, mother had been making progress since moving into her residential treatment center. She had, among other things, been sober for four months as of early June, submitted to random drug testing with negative results, and attended parenting and anger management classes. Accordingly, she filed a petition under Welfare and Institutions Code section 388 alleging that a change of circumstances justified the court's modifying its dispositional order. While accepting the unlikelihood of the court's placing M. with her, mother's petition asked for liberalized visitation and family reunification services. The court granted mother a hearing on her petition.

At the hearing in September, mother noted she had by then been sober for eight months. She also submitted a letter from her residential treatment program supporting her request for reunification services. The letter noted mother had been working hard to stay sober despite "a lot" of unresolved issues from her past (including her own sexual victimization and domestic abuse), but because of the "extensiveness" of her problems the department described her progress as only "minimal," which prevented her from attending to all of M.'s needs. Believing it not "the best thing right now" for M. to live with mother at the treatment facility, the center believed mother should nevertheless "be allotted more time with her daughter to provide them with more of a transition period to get use[d] to being with each [other] again in the event that they eventually get family reunification."<sup>1</sup>

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<sup>1</sup> Mother mistakenly asserts the court misunderstood the center's letter as being against her getting family reunification services. Looking, however, at argument by mother's counsel and the court's comments about the letter in context, the court understood the center was using the word "reunification" as a layperson might, to mean Darla's physical placement with mother in the center. During the hearing, the court mentioned the letter while discussing Darla's need for a permanent plan. Neither mother's counsel nor the court contemplated Darla's return to mother's custody at that time. In noting the center was currently against Darla's and mother's "reunification," the court was only echoing the letter's language by noting the center did not think it wise for Darla to live with mother. Indeed, in ordering liberalized visitation, which is a common

M.'s counsel opposed mother's petition. While acknowledging mother was "in the process of changing her circumstance and that she has accomplished a lot through her programs," counsel argued reunification services were not in M.'s best interests because those services would delay M.'s adoption by her then-caretakers. Counsel further noted mother had abused drugs for almost four decades and, despite several periods of sobriety, had relapsed each time. In counsel's view, mother's current sobriety awaited being "tested in the outside world" after she graduated from her treatment facility. Finally, counsel argued, mother was in partial denial of M.'s sexual abuse by mother's former boyfriend, and mother did not accept the seriousness of M.'s psychiatric problems, illustrated by her equivocation whether she would ensure M. continued taking her medication.

The court praised mother for her progress, and liberalized visitation to three hours a week at her treatment facility. The court denied mother's petition, however, for reunification services. This appeal followed.

In the meantime, the dependency proceedings continued. On April 19, 2007, the court terminated mother's parental rights. She has appealed from that order, and asks that we take judicial notice of both the court's order and her notice of appeal from that termination, a request we grant.<sup>2</sup>

## DISCUSSION

Welfare and Institutions Code section 388 permits a court to modify a previous order when circumstances change in a way that makes modification in the child's best interests. (*In re Jasmine O.* (1994) 8 Cal.4th 398, 415-416; *In re Heraclio A.* (1996)

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part of "reunification" as the dependency system uses the word, the court cited the center's support for increased visitation, thus showing the court correctly interpreted the center as supporting "reunification services" in substance, if not in name.

<sup>2</sup> The appeal from the order terminating parental rights (B193658) is in the briefing stage and we do not address the merits of that appeal in the present opinion.

42 Cal.App.4th 569, 577.) Mother contends the court abused its discretion in denying her petition requesting reunification services. We find otherwise. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 47 [review denial of section 388 petition for abuse of service].)

Mother cites as changed circumstances the progress she has made, which the court acknowledged. But changed circumstances are not enough; she also needed to show by a preponderance of the evidence that reunification services were in M.'s best interests. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317.) Mother's petition foundered on her inability to make that showing.

A dependent child has a compelling interest in a permanent home and stable family life. (*In re Heather P.* (1989) 209 Cal.App.3d 886, 892.) A court must weigh that interest against a parent's desire to reunite with the child. M.'s prospective adoptive family was ready to provide stability and permanency; the court found mother was not. Mother's treatment program and M.'s counsel asserted mother was not ready to receive custody of M. Indeed, even mother acknowledged she was not ready to resume custody of M. just yet. Therefore, providing reunification services prolonged the uncertainty in M.'s life by delaying her adoption, with no guarantee mother would ever be ready to provide M. a safe and suitable home.

Compounding the uncertainty, concerns lingered about mother's future sobriety once she left her residential treatment program. Without minimizing mother's achievements at the center, her sobriety remained untested by the stress and temptation of living outside a structured treatment environment. Mother suggests it is unfair to speculate about a possible relapse from future sobriety in measuring M.'s best interests, and argues the court should instead focus solely on her progress in remaining sober for eight months. Nevertheless, the past can sometimes be prologue to the future, and therefore the court was not arbitrary or unreasonable in considering mother's multiple past failed attempts at sobriety in her nearly 40 year struggle with chemical addiction. As the court noted, a child's life goes on as her parent tries to put her life in order. Under those circumstances, the court did not abuse its discretion by denying mother's request for reunification services.

**DISPOSITION**

The order denying mother's petition under section 388 of the Welfare and Institutions Code is affirmed.

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RUBIN, ACTING P. J.

WE CONCUR:

BOLAND, J.

FLIER, J.